

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF DELAWARE**

Mohammed Majibul Hoque,

Plaintiff

v.

**PAUL NOVAK, DIRECTOR
U.S. Department of Homeland Security
U.S. Citizenship and Immigration
Service, Vermont Service Center,
in his official capacity,
as well as his successors and assigns,**

and

**EMILIO GONZÁLEZ,
Director of U.S. Citizenship &
Immigration Services, in his
Official capacity, as well as his
successors and assigns**

and

**ROBERT S. MUELLER, III
Director of the Federal Bureau
of Investigation, in his
official capacity, as well as his
successors and assigns**

and

**Mr. Colm F. Connolly, Esq.
U.S. Attorney, District of Delaware,
in his official capacity, as well as his
successors and assigns**

Defendants.

**COMPLAINT FOR MANDAMUS
UNDER 28 U.S.C. §1361**

NO. A 46 862 321

I. INTRODUCTION

1. This is a civil action brought to compel Defendants and those acting under the Defendants' direction to adjudicate the application for Naturalization filed pursuant to §310 of the Immigration and Nationality Act, 8 U.S.C. §1421, by Plaintiff on October 23, 2004.

II. JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1361 and §1331. This action is filed in response to unreasonable agency delay and failure to act on Plaintiff's Naturalization in violation of the Administrative Procedures Act ("APA") under 5 U.S.C.A. §702, as well as the failure to perform the mandatory duty to adjudicate the application. Venue is properly with this Court because Plaintiff resides in the State of Delaware.

3. The Plaintiff, **Mohammed Majibul Hoque**, is an adult individual who is a Permanent Resident of the United States (A046 862 321) and is a citizen of Bangladesh. He resides lawfully in the United States.

4. Paul Novak is the District Director of the Vermont Service Center of the U.S. Citizenship and Immigration Service (USCIS). Plaintiff has filed his application for adjustment of status with that office and the office retains jurisdiction over the application. The USCIS, through the Vermont Service Center, has a mandatory duty to act on the application for adjustment of status within a reasonable period of time.

5. Emilio Gonzalez is the Director of the U.S. Citizenship and Immigration Services (USCIS) who is also sued only in his official capacity, as well as his successors and assigns. The USCIS is headquartered at 20 Massachusetts Avenue, N.W., Washington, DC 20529. The USCIS is assigned the adjudication of Naturalization.

6. Robert S. Mueller, III is Director of the Federal Bureau of Investigation (FBI) who is also sued in his official capacity as well as his successor and assigns. The FBI is headquartered 935 Pennsylvania Ave Washington, D.C. 20535. The FBI conducts background checks for the USCIS.

III. BACKGROUND

7. Plaintiff is eligible for Naturalization because he successfully applied and passed the examination required for Naturalization on March 18, 2005. Plaintiff was entitled to apply for Naturalization because he had been a U.S. Permanent Resident for five years prior to applying.

8. Plaintiff has made more than a dozen inquiries to United States Citizenship and Immigration Services in attempts to resolve his pending case. The government has responded by informing Plaintiff simply that his background checks have not been completed.

9. The Plaintiff has complied with all requests made by the USCIS to complete all necessary biometrics appointments. He has provided all of the information requested by the agency and has applied with all of the appointment notices.

10. It is the stated goal of the USCIS to complete all adjudication within six months of filing of the application. Further, the current listed processing time for the Vermont Service Center for applications of this type is approximately 11 months.

IV. STATUTORY AND REGULATORY FRAMEWORK

11. The APA provides a remedy to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §706(1).

12. Mandamus is a remedy available for extreme agency delay where the agency has not performed a mandatory action. 28 U.S.C. §1361.

V. CLAIM FOR RELIEF

13. Defendants have unreasonably delayed and failed to perform a mandatory action in adjudicating the application for Naturalization filed and approved four years ago thereby depriving Plaintiff of his lawful request to become a United States Citizen. INA Sec 336 (b), 8 USC Sec. 1447(b) requires USCIS to act within 120 days after a naturalization examination is conducted under part 335 or the applicant may apply to the U.S. District Court where the applicant resides 8 CVFR Secs. 310.5, 336.9; Nagahi v. INS, 219 F.3d 1166 (10th Cir. 2000);

14. Defendants owe Plaintiff the duty to act upon his application for naturalization and have unreasonably failed to perform that duty.

15. Plaintiff has exhausted any administrative remedies that may exist. No other remedy exists for Plaintiff to resolve Defendants’ delay.

WHEREFORE, Plaintiff prays that the Court:

(1) Compel Defendants and those acting under them to perform their duty to adjudicate the Naturalization of status owed to Plaintiff;

(2) Grant such other and further relief as this Court deems proper under the circumstances; and

(3) Grant attorney’s fees and costs of court.

/s/ Kevin Grubb

Kevin Grubb, Esquire
Attorney I.D. No. 4409
Hogan & Vandenberg LLC
4 East 8th Street, #302
Wilmington, DE 19801
(302) 225 2734

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I HAVE SERVED:

**PAUL NOVAK, DIRECTOR
U.S. Department of Homeland Security
U.S. Citizenship and Immigration
Vermont Service Center
75 Lower Weldon Street
St. Albans VT**

**EMILIO GONZÁLEZ,
Director of U.S. Citizenship &
Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Ave
Washington, D.C. 20529**

**ROBERT S. MUELLER, III
Director of the Federal Bureau
of Investigation
J. Edgar Hoover Building
935 Pennsylvania Ave NW
Washington, D.C. 20535-0001**

**COLM F. CONNOLLY, Esq.
U.S. Attorney, District of Delaware
The Nemours Building
1007 Orange Street #700
Wilmington DE 19801**

in the foregoing matter with a copy of this Complaint for Mandamus by depositing in the United State's mail a copy of same in a properly address envelope with adequate postage thereon, in the manner prescribed by Rule 5 of the Federal Rules of Procedure.

This 16th day of April 2008

_____/s/ Kevin Grubb_____
Kevin Grubb, Esquire
Attorney I.D. No. DE 4409
Hogan & Vandenberg LLC
4 East 8th Street, #302
Wilmington, DE 19801
Attorney for Plaintiffs
(302) 225 2734

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Mohammad Majibul HOQUE

(b) County of Residence of First Listed Plaintiff New Castle, DE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kevin Grubb, Esq, Hogan & Vandenberg 4 East 8th Street Wilm DE
19801 302 225 2734 fax 302 655 5358

DEFENDANTS

Paul Novak, et al

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|--|--|--|--|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input checked="" type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
Immigration and Nationality Act, 8 U.S.C. §1421

Brief description of cause:
Mandamus for Naturalization

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

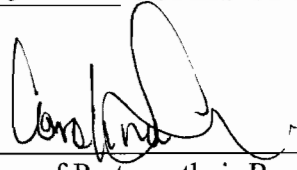
Civil Action No. 08-235

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

4/24/08
(Date forms issued)

x 
(Signature of Party or their Representative)

x Carolina Sandoval
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action